1950. **File No.** S.DWR 6/50

Legal Department

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Examined A **BRANCH**

Subject:— Dharwar Suit

Civil Suit No. 316 of 1949

Bangonda Ramangonda Minor by his next friend Shivangonda Govingonda Kanigonda — Plff

VS

The Province of Bombay and Other — Deft

For recovery of Rs. 130 plus Rs. 23-4-0 as mesne profits from A.M.

S.DWR 6/50

File No.

S.DWR 6/50

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L.C.Suit No. 316 of 1949.

In the court of the Civil Judge. S.D.
Hubli.

Plaintiff :- Bangouda Ramanagouda minor by his next friend Shivangouda Govindgouda Karigoudar of Itigi, Taluka - Ranebennur.

Vs.

Defendant :- 1. The Province of Bombay.
2. Shankarawwa kom Basangouda Karigoufar residing at - Motibennur, Taluka - Ranebennur.

Claim Rs.153-4-0. ✓

In this the W.S. of deft 1 is as follows : -

1. The plff 's suit is malafide and not tenable in law.

2. Plff has no cause of action for this - suit , none of the plaint allegations are true.

3. Plff's suit is time barred.

4. The notice under Section 80 C.P.C. given by the plff to the Collector is not legal - and valid. It does not refer to the present suit.

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R.P.D 34/40.

Suit No. of 1949.

In the Court of the Civil Judge, Senior Division,

H u b l i.

Basangouda Ramangouda Karigoudar, minor by his next friend Shivangouda Govindagouda Karigoudar, age about 65, caste Lingayat, occ. agriculture, residence Itigi, Taluka Ranebinnur, post Ranebinuur,..... Plff.

Against.

1. The province of Bombay.

2. Shankaravva kom Basangouda Karigoudar, age about 50, caste Lingayat, occ. house-hold work,

Residence Motabennur, Taluka Ranebinnur. .... Defts now at Kuppelur, Taluka Ranebinnur.

Claim Rs 153-4-0

Plaintiff begs to state and submit as follows :-

1. Defendant No. 2 Shankaravva kom Basangouda Karigoudar obtained in L.C. suit No. 66 of 1938 of Haveri Court a decree for maintenance against the present plaintiff, and costs were also awarded to her,. The said suit was filed in forma pauperis and hence she had to pay Court fee i.e. Rs 130/- to Coverument. The decree clearly mentioned in para 3 that she should pay Governmet Rs 130/-.

2. The present plaintiff was also to pay to the defendant No. 2 only Rs 119-4-0 as costs, and the maintenance maintenance amount awarded. He was under no liability to pay any thing to Government. Defendant No. 2 filed L.C

It is defective.

5. The notice refers to L.C.Suit No.66 of 1938 of Haveri court . But the parties and the - subject matter of that suit were quite ~~diffi~~ different from those referred to by the present plff .

6. No maintenance decree was obtained by deft 2 in L.C.Suit No.66 of 1938 of Haveri court.

7. Attempts by the Revenue authorities were made to realise the pauper costs in L.C.No.661 of 1938 of Haveri court from deft 1 but they could not - succeed.

8. They proceeded against the charged property as mentioned in para 4 of the - decree in L.C.Suit No.661 of 1938 of Haveri court. But the guardian of the present plff paid the amount to save the property.

9. The amount is given out of the maintenance amount to be given to deft 2. Hence the recovery is quite legal and authoritative. There is ~~nt~~ nothing wrong on the part of the - Government.

10. Plff's suit is barred by - Revenue Jurisdiction ~~xxxxxxxx~~ Act.

11. Plff is not entitled to the amount of Rs.130/- or interest thereon. He cannot claim anything against Government.

His suit against Government be dismissed with costs.

7-12-1949. S.G.P.

Darkhast No. 492 of 1941 of Haveri and recovered all her dues as per decree on 29-7-1943 and the darkhast was disposed of as fully satisfied.

3. As stated above, though Government was not entitled to recover anything from the present plaintiff, and though he was not liable to pay any thing to Government, still, the officers of the Government recovered from the present plaintiff Rs. 130/- on 6-7-1946. This recovery by Government is absolutely illegal and unauthorised and not warranted by the terms of the decree. Plaintiff had to make the payment or otherwise he was threatened with coercive measures. The recovery of the said amount of Rs 130/- from the present plaintiff being illegal and unauthorised, Government having no right to recover the said sum from plaintiff, plff is entitled to a refund of the said sum with interest at 6% from Government. Hence the sui

~~The amount due from the defts is Rs 130/-~~ paid to Government on 6.7-1946, and interest Rs 23-4-0 on Rs 130/- at 6% from 6-7-1946. The total amount due is Rs 153-4-0

5. Defendant No. 2 is made a party to avoid objections..

6. The cause of action accrued on 6-7-1946 when the amount was recovered from plaintiff. Suit filing within two months' notice period. The suit is in time.

7. The plff and the defts are living in the jurisdiction of this Court. Hence this Court has jurisdiction to try this suit.

8. The suit is valued at Rs 153/4- for Court fees and for pleader's fees and for jurisdiction.

9. Plaintiff prays that he should be awarded Rs. 130/- with interest thereon at 6% from date of suit till date of payment and all costs.

Received 4-10-49

Dated 26-8-1949.

26.8.49
Rv. Hotkar M.

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Hubli Civil Suit No.316 of 1949

This is a suit for recovery of Rs.130/- and interest. The facts are that the defendant No.2 in this suit filed a suit in forma-pauperis against the father of the plaintiff for maintenance in the Havelli Court. The suit was decreed and under Order 33 Rule 10 the plaintiff was ordered to pay the amount of court fees but the decree at the same time created a charge in respect of court fee and the maintenance amount on the properties in that suit which had fallen to the share of the plaintiff's father. Attempts to recover the amount from the defendant No.2 having failed the same was recovered from the plaintiff who paid it presumably in order to save the charged property from being sold. He has now filed this suit asking for a refund of that amount falsely contending that he was not liable under the decree to pay the amount. He has purposely omitted to refer to the fact that there was a charge in respect of court fees on the property which was the subject matter of that suit. The defence of the suit may be sanctioned on the lines of the accompanying brief.

This is correct R.K.

The decree in the maintenance suit which is at p.3 of the Collector's File is written in the regional language which I am not able to read. The A.L.R. is kindly requested to go through the same and check up the brief accordingly.

R.W. 3/3/50

A.L.R R.K. 3/3

Seen R.D. 6.3.

6.3.50

6.3.50 -L

2.55

Reckon 7/3/50

×No 3104 d.6-3-1950

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IN THE COURT OF THE CIVIL JUDGE,SENIOR DIVISION,HUBLI.

Civil Suit No.316 of 1949.

Basangouda Ramangouda Karigoudar,
minor by his next friend Shivangouda
Govindagouda Karigoudar of Itigi,
Taluka Ranebennur. ... Plaintiff.

Vs.

The Province of Bombay and another. ... Defendants.

The following is the written statement of the defendant No.one, (the State of Bombay) in this suit.

1. Paragraph 1 of the plaint is not disputed, but the defendant submits that the facts stated therein by the plaintiff are incomplete. In the first place, the defendant No.2 in this suit had obtained a maintenance decree in long cause suit No.661 of 1938 and not in long cause suit No.66 of 1938 as alleged in paragraph 1. Secondly, it is submitted that the decree in suit No. 661 of 1938 directed the defendant No.2 to pay the court fee amount of Rs.130/- to Government but the decree also further provided that a charge should be kept on the suit properties which went to the share of the defendant No.1 in that suit in respect of the amount of maintenance and also the pauper cost payable to Government. The defendant submits that in omitting to mention this essential fact in the plaint the plaintiff has attempted to mislead the Court.

2. The allegations in paragraphs 2 and 3 of the plaint are also misleading and not correct. It may be true that under the terms of the decree the present plaintiff or his predecessor was not directly under any liability to pay the amount of court fees to Government;but as stated before the Government was entitled to proceed against the property which was the subject matter in that suit and on which the decree created a charge in respect of the court fees. The officers of this defendant made attempts to recover the amount of court fees in the first

instance from defendant No.2, but as no recovery could be made from her, the plaintiff was given an opportunity to pay up the court fees before proceeding against the property over which the charge was created under the decree. The plaintiff accordingly paid the amount of court fees and he is not, therefore, entitled to ask for a refund of the same. The allegation in paragraph 3 of the plaint that the recovery was illegal, unauthorised and not warranted by the terms of the decree is not correct and is hereby denied.

3. It is submitted that the present suit is barred under section 47 of the Civil Procedure Code.

4. The suit may, therefore, be dismissed with costs.

District Government Pleader.

I, District Government Pleader, do hereby declare that what is stated in paragraphs 1 to 4 above is true according to the information received and believed to be true. This verification is made at on the day of 1950.

District Government Pleader,

Suits:
Dharwar.
For recovery of Rs. 130 plus Rs. 23-4-0 as interest thereon from Government.

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GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 3568.

Bombay Castle, 14th March 1950.

Endorsement from the Collector of Dharwar, No. LPD 34/40, dated 23rd January 1950—Forwarding the papers in the suit noted in the margin; and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), Hubli.

Civil Suit No. 316 of 1949.

Bangouda Ramanagouda minor by his next friend Shivangouda Govindgouda Karigoudar ... ... } Plaintiffs;

versus

The Province of Bombay and another .. .. Defendants.

Claim Rs.

Memorandum to the Subordinate Government Pleader, Hubli, No. 3295, dated 9th March 1950—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

Issued 12/8/50

x Leg. H 167—1

original

[*P.T.O.*

To

* The Revenue Department,
* The Collector of Dharwar,
* The Subordinate Government Pleader, Hubli (with two copies of the brief).

*With a copy of the brief.

No. of 1950.

Copy forwarded for information and guidance to

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HUBLI (DHARWAR) CIVIL SUIT No. 316 OF 1949.

Chronological Statement of Facts.

The suit is for recovery of Rs. 130 plus Rs. 23-4-0 as interest thereon from Government.

2. Shankarava the defendant No. 2 in this case obtained a decree for maintenance against one Ramangauda the father of the plaintiff in this suit in long cause suit No. 661 of 1938 in the Court of Civil Judge at Haveli. The said suit was filed in *forma-pauperis*. The decree directed the court fees in that suit to be paid by Shankarava the plaintiff in that suit but a charge was also kept on the property in that suit in respect of the amount of past and future maintenance payable to the plaintiff and also the cost payable to Government.

3. Attempts were made to realise the amount of court fees from the defendant No. 2 in this suit but no recovery could be made from her. Therefore an opportunity was given to the present plaintiff as a legal representative of Ramangauda to pay up the amount of court fees before recovering the same from the charge property.

4. On 6th July 1946 the plaintiff's guardian Shivangauda paid the court fees amounting to Rs. 130 to the Revenue authorities.

5. On 11th June 1949 the plaintiff's guardian gave notice of suit under section 80 of the Civil Procedure Code and on 26th August 1949, he filed the present suit in the Court of the Civil Judge, Senior Division, Hubli.

Grounds of Defence.

The only contention in the plaint is that the decree in the maintenance suit directed the defendant No. 2 Shankarava (the plaintiff in that suit) to pay the amount of court fees ; and that the plaintiff had to pay to her only Rs. 119-4-0 as costs plus the amount of maintenance ; and that he was under no liability to pay any costs to Government. He, therefore, contends that the recovery of Rs. 130 made from him by Government is illegal and not warranted by the terms of the decree. However, it is clearly mentioned in paragraph 4 of the decree that the charge is kept on the suit properties to the extent of the share of defendant No. 1 (Ramangauda) in respect of the amount of maintenance plus the court fees payable to Government. Under Order 33, rule 10 of the Civil Procedure Code, where the pauper plaintiff succeeds in the suit the amount of court fees payable by him is recovered by Government from any party ordered by the decree to pay the same and is also a first charge on the subject matter of the suit. In the present case Government tried to recover the court fees in the first instance from the defendant No. 2 who was ordered by the decree to

pay the same. As no recovery could be made from her, Government was entitled to proceed against the properties which fall to the share of Ramangauda on which the decree created a charge in respect of the court fees amount as well as the amount of the maintenance. However, before proceeding against the property, an opportunity was given to the plaintiff to pay up the same and the plaintiff paid the court fees accordingly. He is not, therefore, entitled to a refund of the same. His contention that Government was not entitled to recover anything from him is misleading.

2. It should further be contended that the present suit is barred under section 47 of the Civil Procedure Code. Under Order 33, rule 13 of the Civil Procedure Code, all matters arising between Government and any party to the suit under rules 10, 11 or 12 shall be deemed to be a question arising between the parties of the suit within the meaning of section 47. The question whether Government had a right to recover the amount of court fees from the present plaintiff is a matter arising under rule 10 and, therefore, the Government is deemed to be a party to the maintenance of suit within the meaning of section 47. Under that section all questions arising between the parties to the suit in which the decree was passed or their representatives and relating to the execution, discharge or satisfaction of the decree shall be determined by the court executing the decree and not by a separate suit. It is clear that the question of recovery of court fees by Government under the terms of the decree is a question arising between the parties to the suit and relating to the execution, discharge or satisfaction of the decree and, therefore, the remedy of the plaintiff, if any, was to apply to the court executing the decree. The plaintiff was not entitled to file a separate suit against Government.

3. For the above reasons it should be submitted that the suit fails and must be dismissed with costs.

her Pleader
Pl produce a new fee
three books of return in 'A' of the
the accompanying Sheet
D/ 1416 S. Dharwad 6/50
(New Fee)
1416

-15-

Received on :- 26-8-1949,

Registered on :- 26-8-1949.

Decided on :. 21-4-1950.

Duration :- 7 months and 25 days.

In the Court of the Civil Judge, Senior Division

At Hubli.. Exh. 25.

L.C.Civil Suit No. 316 of 1949.

Basangouda Ramangouda Karigoudar minor by his next friend Shivangouda Govindagouda Karigoudar, age 65, occ. agric of Itagi, Taluka Ranebinnur.

Against.

1. The Province of Bombay.
2. Shankarawwa kom Basangouda Karigoudar, age 50, occ. household duties of Motebinnur, Taluka Ranebinnur, now at Kuppelur Taluka do.

Claim Rs 153-4-0-

This is a suit by the plff to recover Rs 130/- which is alleged to have been recovered from him by Government with interest. His case is that deft 2 obtained a maintenance decree against him in Haveri Court in L.C Suit No.66/1938. That suit was filed by deft No.2 in forma pauperis and she had therefore to pay to Government Rs 130/- on account of Court fees. Plff was not liable to pay any thing to Government. Yet the Govt recovered from him Rs 130/- on 6-7-1946 which was illegal and unauthorised. Hence this suit.

Deft No. 1 has redovered all her dues under the decree by filing L.D.No. 492/1941.

2. The defence of deft No. 1 is that deft No.2 had obtained a maintenance decree against plff not in L.C.Suit No.66/38 but in L.C.Suit No. 661/38 in which a charge was kept on the suit property in respect of pauper costs and the suit property was allotted to the share of deft No.1 viz, the plff in this suit. Therefore, the Government was entitled to

recover the costs from the said property. When the plff paid the amount he is not entitled to ask for the refund of the same.

3. One of the preliminary issues raised is :- Whether the plff has given notice under section 80 C.P.C. before filing the suit and if so, whether it is valid and legal ?

4. My finding is in the negative.

Reasons.

5. At the hearing Mr. Hotanhalli pleader for plff admitted that deft No. 2 had obtained maintenance decree against plff's deceased father not in L.C.Suit No.66/38 as alleged in the plaint but in L.C.Suit No. 661/38 in Haveri Court and this is also clear from the certified copy of the decree passed in that suit. Vide Ex.4. The notice given by the plff to Government before the suit under section 80 C.P.C. does not give the correct number of the suit in which deft No 2 was given a maintenance decree. Vide Ex. 24. It is clear therefore from the plff's own admission that the notice under section 80 C.P.C. given to deft No.1 is not legal and valid. Hence my finding in the negative.

Order.

Plff's suit is dismissed with costs. Plff do bear the ~~xxxxx~~ deft's costs.

21-4-1950. Sd. S.M.Bhoj.

Civil Judge, Senior Division.

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Ex. 26.

Decree.

In the Court of the Civil Judge, Senior Division,

Hubli.

Long Cause Suit No. 316 of 1949.

Plaintiff :- Basangouda Ramangouda Karigoudar, minor by his next friend Shivangouda Govindagouda Karigoudar, age about 65, occ. agric, residence Itigi, Taluka Ranebinnur

vs.

Defendant :- 1. The Province of Bombay.

2. Shankaravva kom Basangouda Karigoudar, age about 50, occ. household work, residence Motebinnur, Taluka Ranebinnur now at Kuppelur Taluka Ranebinnur.

Presented on 26-8-1949.

Filed on :- "

Claim amcunt Rs 153-4-0.

Plff begs to state and submit as follows :-

Defendant No. 2 Shankarawwa kom Basangouda Karigoudar obtained in L.C. Suit No.66/1938 of Haveri Court a decree for maintenance against the present plaintiff, and costs were also awarded to her. The said suit was filed in forma pauperis and hence she had to pay Court fee that is Rs 130/- to Government. The decree clearly mentioned in para 3 that she should pay Government Rs 130/-.

The present Plaintiff was also to pay to deft No.2 only Rs 119-4-0 and the maintenance amount awarded- he was under no liability to pay anything to Government. Deft No.2 filed L.C.Darkhast No. 492 of 1941 of Haveri and recovered all her dues as per decree on 29-7-1943 and the darkhast was disposed of as fully satisfied.

As stated above, though Government was not entitled to recover any thing from the present plaintiff. and though

he was not liable to pay any thing to Government, still, the officers of the Government recovered from the present plff Rs 130/- on 6-7-1946. This recovery by Government is absolutely illegal and unauthorised and not warranted by the terms of the decree. Plff had to make the payment or otherwise he was threatned with coercive measures. The recovery of the said amount of Rs 130/- from the present plff being illegal and unauthorised, Government having no right to recover the said sum from plaintiff, plff is entitled to a refund of the said sum with interest at 6% from Government. Hence the suit.

The amount due from the defts is Rs 130/- paid to Government on 6-7-1946 and interest Rs 23-4-0 on Rs 130/- at 6% from 6-7-1946. The total amount due is Rs 153-4-0.

The defendant No. 2 is made a party to avoid objections.

The cause of action accrued on 6-7-1946 when the amount was recovered from plaintiff including two months notice to Government the suit is in time.

The plff and the defts are living in the jurisdiction of this Court. Hence this Court has jurisdiction to try this suit.

The suit is valued at Rs 153-4-0 for Court fees and for pleader's fees and for jurisdiction.

Plff prays that he should be awarded Rs 153-4-0 with interest thereon at 6% from date of suit till date of payment and all costs.

Suit coming on this day the 21st April 1950 before Shri. S.M.Bhoj Civil Judge, Senior Division Hubli in the presence of Shri R.V.Hotanhalli pleader for plff and Shri B.R-Mathad pleader for deft 1 and N.K.Dixit and L.R.Durg pleader for deft 2, it is hereby ordered and decreed as under:

Plff's suit is dismissed with costs. Plff do bear the deft's costs.

	Costs of plff.	Costs of deft 1.	Costs of deft 2.
Stamp for plaint .	Rs15-0-0	0-0-0	0-0-0
"" Vakalat.	0-0-0	0-0-0	0-0-0
Process fees on Ex.1.	1-8-0	----	----
Pleader's fees on Rs 153-4-0 Minimu,.	15-0-0	----	15-0-0
Stamps and copying fees	4-4-0	3-12-0 for applications Exs.8,9.12, 15,17 &21	0-10-0
	Rs 37-0-0	18-12-0	16-4-0
Costs disallowed.	-------	3-12-0. Exs.8, 9.12, 15,17,&21.	0-10-0 Ex.11.
Total	Rs 37-0-0	15-0-0	15-0-0

Given under my hand and the seal of the Court this day the 21st April 1950.

Sd. Pandhari M.R.
Karkun.

(Seal)

Sd. S.M.Bhoj.
Civil Judge, Senior Division.

Suits:
Dharwar.
For recovery of Rs. 130 plus Rs. 23-4-0 as interest thereon from Government.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 12/60
Bombay Castle, 25th August 1950.

Read Government Resolution, Legal Department, No.3568, dated the 14th March 1950.

Letter from the District Government Pleader, Dharwar, No. 535,

In the Court of the Civil Judge (Senior Division), Hubli.	dated the 6th June 1950,
Civil Suit No. 316 of 1949.	
Bangouda Ramanagouda minor by his next friend Shivangouda Govindgouda Karigoudar..Plaintiffs:	stating
versus	that the
The Province of Bombay and another .....Defendants.:	suit

noted in the margin was decided by the Civil Judge Senior Division, Hubli, on 21st April 1950, when the following order was passed :-

" Plaintiffs suit is dismissed with costs. Plaintiff do bear the defendants costs."

Letter from the District Government Pleader, Dharwar, No. 867, dated the 14th August 1950, forwarding uncertified copies of the judgment and decree.

RESOLUTION :- The result of thesuit is recorded.

By order of the Governor of Bombay,

original R.M. Mehta
R.M. Mehta,
Assistant Secretary to Government.

Issued
25/8

To,

The Revenue Department,
The Collector of Dharwar.

HSP
23/8

Sd/- for Reg
24/8 A.S.

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